THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.20746 OF 2006

DATED: 06-02-2007

BETWEEN

Katreddy Kusumeshwar Rao,
S/o. Late Sarraiah, Sarpanch,
Pedakapavarm Gram Panchayat,
Akiveedu Mandalam, West Godavari District.

...PETITIONER

AND

The Panchayat Secretary, Pedakapavaram
Gram Panchayat, Akiveedu Mandalam,
West Godavari District and others.

...RESPONDENTS

ORDER:

The Sarpanch of Pedakapavaram Gram Panchayat, Akiveedu Mandal, West Godavari District, filed this writ petition seeking a Writ of Mandamus to declare the action of the respondent authorities in taking over the possession of the coconut trees raised by the land owners adjacent to their lands over the canal bund and road margin, which is a Gram Kantam land belonging to Pedakapavaram Gram Panchayat as illegal, arbitrary, against to the principles of natural justice and to direct the respondent authorities not to take over the possession of the said trees by allowing the said Gram Panchayat to conduct the auction of said coconut trees.

2. It is the case of the petitioner that he was elected as Sarpanch of the gram panchayat on 06.08.2006 and that prior to taking over charge there were about 175 coconut trees raised by the land owners adjacent to the canal bund and road margin which is the gram kantam and the same belongs to the gram panchayat.

The gram panchayat alone used to conduct the auction in respect of the grass, palm trees and coconut trees raised by the landowners and the said amounts were used for the development of the village. The adjacent land owners raised the coconut trees and the P.W.D authorities were also aware of the conduct of the auction by the gram panchayat in respect of the said trees and they never raised any objection but the respondent authorities with following due process of law and without issuing any notice either to the adjacent land owners or the gram panchayat made markings on the said trees with a mala fide intention to take possession of the same and to conduct the auction of the said trees. The said action of the respondents being illegal and unsustainable, the gram panchayat passed a resolution with regard to the approval of the Executive Engineer, P.W.D., Irrigation Department, Settipeta, West Godavari District to permit the gram panchayat to conduct auction of the coconut trees along with grass and palm trees but no action has been taken on the said representation.

3. The second respondent – Executive Engineer, P.W.D., Irrigation Department, filed a counter stating that the coconut trees raised by the adjacent landowners on canal and channel bunds are in P.W.D. land i.e. irrigation department in the village limits of Pedakapavaram village and the gram panchayat has no right to conduct auction to the said coconut trees as per the Andhra Pradesh Farmers Management of Irrigation System Act 11 of 1997 (for short 'the Act 11 of 1997').

The said coconut trees are in the canal and channel survey numbers only and the said trees are not located in the gram kantam land belonging to the gram panchayat and therefore, it is incorrect to state that the said trees are situated in the gram kantam land.

Prior to the functioning of Water Users Associations activity, the gram panchayat was conducting auction for grass and palmarah trees raised by the landowners on canal and channel bunds adjacent to the ayacutdars lands. Subsequently as per the Water Users Associations Act, any revenue income through P.W.D. lands belongs to concerned Water Users Association. As per Section 22 clause IV of the Act 11 of 1997 the funds of the farmers organizations shall comprise of income from the properties and the assets attached to the Irrigation Department within the area of operation. The said coconut trees are under the possession of Water Users Association and any income from P.W.D. lands belongs to the concerned Water Users Association only i.e. in the Minor & Medium Drains and Minor & Medium Channels.

The gram panchayat has no right over the said trees. The ayacut under the jurisdiction of pedakapavaram village is about 4150 acres for which the Government is paying Rs.10/- per acre to the gram panchayat. Therefore, the irrigation department has no right to issue permission for conducting auction. Under Rule 5 clause (vii) of Andhra Pradesh Farmers' Organization Rules, 1997 (for short 'the Rules') the farmers organization has the right to utilize the canal bunds as long as such use is not obstructive, or destructive to hydraulic structures by planting timber, fuel, or fruit trees or grass for augmenting the income of the farmers organization. Thus, it is stated that the fifth respondent water users association alone in entitled for the income on the said trees but not the gram panchayat. It is stated that, in fact, the Commissioner and the Principal Secretary to the Government vide letter dated 05.09.2006 addressed to the District Collectors and Superintending Engineers clarified the position of conducting auction by the water users association only.

4. The first respondent – Panchayat Secretary of the gram

panchayat, filed a counter supporting the case of the petitioner and stated that after following prescribed procedure the auction was conducted on 01.10.2006 for Rs.29,500/- at Rs.300/- per tree for three years whereas the fifth respondent – water users association putting an antedate and to cause disturbance to the affairs of the gram panchayat alleged to have conducted auction on 27.09.2006 at Rs.30/- per tree per year, that is to say, Rs.90/- per tree for three years totaling to Rs.1,470/-. It is further stated that if the fifth respondent had conducted the auction there would have been tom tom in the village and more so, no resolution was passed to that effect.

5. I am not inclined to express any opinion with regard to the legality or validity of the auction conducted by the fifth respondent as it is open for any aggrieved person to question the said auction on the ground that there was no sufficient notice and the amount derived is meager and not proportionate to the income that is to be derived.

The question that arise for consideration in the writ petition is with regard to the right to derive the income by way of conducting auction in respect of the usufruct of the said trees situated on the canal bunds and channels belonging to the irrigation department.

6. The fifth respondent – water users association filed a counter stating that the gram panchayat has no right whatsoever over all the trees including the coconut trees on the bunds on both the irrigation and drainage channels, as they are the property of the irrigation department. The coconut trees on the bunds of all the irrigation and drainage channels are vested in the water users association by virtue of Act 11 of 1997 and therefore, the fifth respondent has got jurisdiction over the trees on the canal bunds. Accordingly, the fifth respondent association conducted auction on

27.09.2006 to the farmers who are having lands abutting the coconut trees situated on the canal bunds at Rs.30/- per tree and the said amount was also credited to the account of the said association. The farmers have taken lease from the association and they are in possession of the coconut trees. It is stated that when there was interference with regard to usufruct of the said trees and when some anti social elements committed theft of the coconuts at the instance of the petitioner,
the beneficiaries of the lease have made a complaint to the police and a case in Cr.No.531 of 2006 was registered and the investigation is in progress.

7. Under Section 46 of the Andhra Pradesh Panchayat Raj Act, 1994 (for short 'the Act') the gram panchayat may make a provision for the planting and preservation of groves and trees on the sides of roads and other public places. Under Section 55 of the Act any property or income, which by custom belongs to or has been administered for the benefit of the villages in common or the holders in common of village land generally or of lands of a particular description or of lands under a particular source of irrigation, shall vest in the gram panchayat and be administered by it for the benefit of the villagers or holders. Under Section 56 of the Act subject to such conditions and control as may be prescribed, the Government may transfer to any gram panchayat the protection and maintenance of any village irrigation work, the regulation of turns of irrigation, or of distribution of water from any such irrigation work to the field depending on it.

8. Learned counsel for the petitioner and Mr. M. Prabhakar Rao, learned counsel for the first respondent submits that the gram panchayat alone has been enjoying the usufruct of the coconut trees by custom from time immemorial, therefore, the right to enjoy

the usufruct from the said trees situated on the canal bunds and channels vests with the gram panchayat alone under Section 55 read with Section 80 of the Act. Section 80 of the Act goes to show that all public water-courses, springs, reservoirs, tanks etc. and other water works including those used by the public to such an extent as to give a prescriptive right to their use, whether made, laid or erected at the cost of the gram panchayat or otherwise for the use or benefit of the public and also any adjacent land, not being private property, shall vest in the gram panchayat and be subject to its control and the rights to use adjacent land appertaining thereto for planting of trees and enjoying the usufruct thereof or for like purpose. It is stated under Section 74(2)(xvii) of the Act all income derived from trees standing on porambokes although the user of the porambokes is not vested in the gram panchayat belongs to the gram panchayat and the said fund is called gram panchayat fund.

It is further stated that under Section 147 of the Act any power or function vested in the gram panchayat by or under this Act, shall be transferred from the gram panchayat to any other local authority by way of issuing a notification and as the gram panchayat alone is conducting the auction of the usufruct of the said trees without there being any notification transferring the right in favour of the fifth respondent; the fifth respondent cannot be permitted to conduct auction.

9. On the other hand, learned Government Pleader appearing for respondents 2 to 4 and the learned counsel appearing for the fifth respondent submit that under Section 17 read with Section 22 of the Act 1997 the water users association alone is entitled to derive income of the plantation on canal bunds and the tanks by leasing out such bunds. The fund of the framers organization shall

comprise of income from the properties and assets attached to the irrigation system within its area of operation. It is further stated that under Rule 5(vii) of the Andhra Pradesh Farmers' Organization Rules, 1997 the farmers organization shall alone be entitled to utilize the canal bunds – as long as such use is not obstructive, or destructive to hydraulic structures – by planting timber, fuel, or fruit trees or grass for augmenting the income of the farmers' organization.

10. I have heard the arguments of the respective counsel. There is no dispute that the canal bunds and channels belong to the P.W.D, Irrigation Department. If that be so, I am of the opinion that unless the Government transfers the rights to enjoy income from the trees in favour of the gram panchayat, it cannot be said that the gram panchayat is entitled to derive the income from the trees on the canals and channels, but the Government alone is entitled to enjoy the same. May be the gram panchayat was auctioning prior to the Act 11 of 1997 came into force and after the Act came into force, the water users association conducts the auction. The dispute whether the gram panchayat used to conduct auction prior to the Act 11 of 1997 came into force is immaterial as I am of the opinion that as long as the said rights have not been transferred by the Government from P.W.D. Irrigation Department to Gram Panchayat, it cannot be said that the gram panchayat is entitled to enjoy the said rights. When there was no exercise of such power to transfer the rights the question of issuing any notification under Section 147 of the Act does not arise.

11. No doubt, under Section 42 of the Act 11 of 1997 nothing contained in the Act shall affect the rights or properties vested in the gram panchayat. The question that arises for consideration is as to whether the rights in respect of the canals and channels are

vested in the gram panchayat. As already stated, I am of the opinion that the rights were not at all vested with the gram panchayat by the order of the Government with regard to coconut trees on the canal bunds and channels of the Irrigation Department. If that be so, by virtue of the Act 11 of 1997, the Water Users Association alone is entitled to derive the income from the properties and assets attached to the irrigation system within its area of operation under Section 17 read with Section 22 of the Act and Rule 5 of the Rules.

12. In view of the aforesaid facts and circumstances of the case, I am of the opinion that the petitioner is not entitled for any relief in the writ petition.

The writ petition is accordingly dismissed. There shall be no order as to costs.

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V. ESWARAIAH, J

February 6, 2007
DSK